



**Muri Mwaniki & Wamiti Advocates v Gateway Insurance Company Limited
(Miscellaneous Application 202 of 2013) [2024] KEHC 8169 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8169 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS APPLICATION 202 OF 2013**

SM MOHOCHI, J

JULY 4, 2024

BETWEEN

MURI MWANIKI & WAMITI ADVOCATES APPLICANT

AND

GATEWAY INSURANCE COMPANY LIMITED RESPONDENT

RULING

1. Before me is a Motion dated 25th September, 2023 together with supporting affidavit of Martin Mwaniki filed pursuant to Section 51 (2) of the Advocates Act, Paragraph 7 of the Advocates (Remuneration) Order and Order 51 Rule 1 of the Civil Procedure Rules, 2010 praying that
 - i. Spent.
 - ii. That the said sum of Kshs.121,500/= in costs be paid with interests at the rate of 14% per annum from 30th June being the date one (1) month after the service of the bill of costs on the Respondent, until payment in full pursuant to paragraph 7 of the Advocates (Remuneration) Order, 2014.
 - iii. The Costs of the application be awarded to the Applicant/Advocate.
2. The Application is based on the following grounds:
 - i. The Deputy Registrar taxed the Applicant's costs at Kshs.112,500/= and the same has been certified per the Certificate of Taxation dated 18th August 2023.
 - ii. The Applicant is entitled to interest on the said taxed costs at the rate of 14% per annum from 30th June 2013 being one (1) month after the service of the bill of costs to the Respondent, until payment in full pursuant to paragraph 7 of the Advocates (Remuneration) Order, 2014.



- iii. The Respondent is yet to settle the said amount and the Applicant would wish to commence execution proceedings against him.
3. Martin G. Mwaniki an Advocate of the High Court of Kenya, practicing as such in the firm of Muri Mwaniki Thige & Kageni LLP Advocates having conduct of this matter on behalf of the Applicant depones that, the Applicant was given instructions by the Respondent to defend their insured in Narok SPMCC No. 162 of 2008, Stanley Kabugi Macharia v. Nyambura Chege & Njoroge Karanja where judgment was entered against the Defendant and the Plaintiff awarded general damages of Kshs.350,000/= and special damages of Kshs.12,200/= together with costs and interests.
 4. That, the Applicant made demand to the Respondent for payment of their fees but the demands elicited no response prompting the Applicant to file the Bill of Costs dated 16th May 2013.
 5. That, on 26th July 2022, the said Advocate/Client Bill of Costs was taxed at Kshs.121,500/= as appears from the Certificate of Taxation dated 18th August 2023 and the said costs have not been paid by the Respondent and remain outstanding to date. The Applicant forwarded and/or served the said Certificate of Taxation by letter dated 28th August 2023 upon the Respondent.
 6. That, the Respondent has not, to his knowledge, filed a reference against the said taxation and the Certificate of Costs has not been set aside or altered.
 7. That, the Applicant is entitled to interest on the taxed costs at the rate of 14% per annum from 30th June 2013, being the date one (1) month after the service of the Bill of Costs on the Respondent, until payment in full pursuant to Paragraph 7 of the *Advocates (Remuneration Order)*, 2014.
 8. The Applicant would wish to commence execution proceedings against the Respondent and the same can only be done once the taxed costs have been endorsed as the judgment of this Honourable Court and the Applicant have obtained a decree to that effect.

The Respondents Response

9. Cassina H. Odoyo an Advocate of the High Court of Kenya having the conduct of this matter on behalf of the Defendant swore a replying affidavit deponing that, this instant Application arises out of an Advocate/Client Bill of Costs dated 16th May 2013 that was lodged by the Advocate for the Applicant for taxation.
10. That, the Deputy Registrar of the High Court issued a Notice of Taxation to the parties, indicating that the Bill of Costs was to be taxed on 2nd August 2013 and that, the said Advocate/Client Bill of Costs was taxed on 26th July 2022 taxed and allowed against the Respondent in the sum of Kenya Shillings One Hundred and Twenty-One Thousand Five Hundred (Kshs. 121,500/=) only.
11. A Certificate of Taxation on the Advocate/Client Bill of Costs was issued by the Deputy Registrar on the 18th July 2023 and that, the Applicants Advocates on 28th August, 2023 sent a Demand Letter demanding for the settlement of the taxed sum as per the Certificate of Taxation dated 18th August 2023.
12. That, there being a delay in settlement of the same, the Applicant/Advocate filed an Application for the Certificate of Taxation to be converted into a Judgment and therein demanded for interests of the taxed sum at 14% per annum from 30th June 2013.
13. That, that the Respondent/Client on 9th November 2023, settled Kenya Shillings One Hundred and Twenty-One Thousand Five Hundred (Kshs. 121,5001=) the Taxed amount of per the Certificate of Taxation and thus in the circumstances, the Respondent/Client, believes factually and legally, that the



claim for interests by the Applicant only crystallizes upon the Bill of Costs being taxed by the Court that was done on 26th July 2022.

14. That, the demand for interests amounting to Kshs. 176,344.77/= against a Principal Sum of Kshs. 121,500/= flies against the hitherto well established in duplum rule that frowns against unjust enrichment as a result of Interests.
15. That, the Applicant/Advocate is only entitled to interests from the date of the Taxation of the Bill of Costs herein which is from 26th July 2023. The Respondent thus opposes the Application for lack of merit, praying that the same is dismissed.
16. The Court had directed the parties to file their respective written submissions of which only the Applicant complied and thus the Ruling is without the written submissions by the Respondent.

Applicants Submissions

17. It is the Applicant submission that it received a sum of Kenya Shillings One Hundred and Twenty - One Thousand Five Hundred (Kshs.121,500/=) from the Respondent after the Application herein was filed and served upon it and in light of the above, the Applicant seeks for Orders 2 and 3 in the Application be granted.
18. That, Rule 7 of the *Advocates remuneration order* states that:

“An advocate may charge interest at 14 percent per annum on his disbursements and costs, whether by scale or otherwise, from the expiration of one month from the delivery of his bill to the client, providing such claim for interest is raised before the amount of the bill has been paid or tendered full’
19. The Applicant submit that, indeed it served the Respondent the bill of costs on 30th May 2013 proof of which is the attached Affidavit of service labelled "MGM 4" on record and therefore entitled to the interest on the taxed costs at the rate of 14% per annum from 30th June 2013, being the date one (1) month after the service of the bill of costs on the Respondent until payment in full pursuant to paragraph 7 of the Advocates (Remuneration Order, 2014).
20. Reference is made to a similar case, *Okong'o Wandago & Company Advocates v Invesco Assurance Company Limited* [20181 eKLR. the Court held that;

“The rate of interest awardable is 14% per annum applicable from 30 days after the date of service of either the Bill of costs. There is evidence that the bill of casts was sent to the respondent by courier on 6th February, 2018. Given that the bill might have been delivered within a day or two of dispatch, thirty (30) days from the dispatch expired on 8th March, 2018. The upshot of this is that the notice of motion dated 8.8.18 succeeds and is allowed in the following terms:

 - a. Judgment is hereby entered for the advocate against the Respondent for Kshs. 154,271/-
 - b. Interest shall accrue on the taxed costs at 14% per annum from 8.3.18 until payment in full
 - c. The Advocate will also have the costs of this application.”



21. The Applicant submit in response to the Respondent's reliance on the in duplum rule that, the definition and the application of the rule limits the amount recoverable by a bank on a defaulted facility to the principal owing when the loan became non-performing and thus it is crystal clear that the matter before the Court does not in any way relate to a loan, neither is the Applicant a bank and the Respondent is definitely not a borrower.
22. The Applicant therefore hasten to submit that the in duplum rule does not apply herein and should not be entertained by this Court thus, praying that this Court grants the Orders sought in the Application dated 25th September 2023.

Analysis and Determination

23. Upon considering the Notice of Motion dated 25th September, 2023 together with supporting affidavit of Martin Mwaniki together with Replying Affidavit dated 13th March, 2024 sworn by Cassina Odoyo and the advocates written submissions dated 6th May, 2024, I have crystalized only one issue for determination. Whether interest on taxed costs can be backdated to when the bill of costs was filed?
24. While the Plain reading of Rule 7 of the Advocate Remuneration Order Presupposes that “the interest may be awarded from the expiration of 30 days after the bill of cost is delivered to the client.”
25. I am of the considered opinion that, under the circumstances, this bill of cost was prepared on 16th May, 2013 and never prosecuted until 26th July, 2023 when the taxation was undertaken.
26. According to Section 4 (4) of the Limitation of Actions Act, recovery of interest on a Court Judgment cannot be done after 6 years unless sufficient cause of delay is demonstrated.
27. It is apparent that, the advocate never prosecuted the taxation from June, 2013 to July 2023 a period of 10 years and no logical explanation has been offered.
28. This Court is equally of the view that Rule 7 was intended to serve as a 30-day notice and that it would have been impossible to determine the interest on costs in June 2013.
29. This Court is of the view that interest can only be awarded upon taxation and that the same can only be awarded from the date the Ruling on taxation was delivered.
30. I accordingly order that Judgment be entered in favour of the Applicant/Advocate at the rate of 14% to be computed from 28th August, 2023. The date the Respondent received a demand to pay the taxed amount.
31. Cost of this application are awarded to the Applicant.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 4TH DAY OF JULY, 2024

MOHOCHI S.M

JUDGE

